

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S
SUPPLEMENTAL
APPENDIX**

76-2072

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 76-2072

EDWARD MALLEY, JR.,

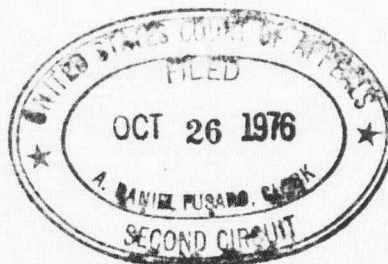
PETITIONER-APPELLEE

v.

THE STATE OF CONNECTICUT and
JOHN MANSON, COMMISSIONER OF
CORRECTIONS,

RESPONDENTS-APPELLANTS

PETITIONER'S SUPPLEMENTAL APPENDIX



PETITIONER'S SUPPLEMENTAL APPENDIX

The following is submitted as a Supplemental Appendix to cure deficiencies in the record submitted by the Appellant as a "Joint Appendix." The Joint Appendix was not submitted to Mr. Malley's counsel for approval prior to printing, although the feasibility of a joint appendix was discussed. Nevertheless, for the purpose of limiting the volume of appendices submitted to the court, petitioner adopts the Joint Appendix, as supplemented by the following record. References in petitioner's brief are referred to page number of the Joint Appendix as Jt. App. at ____., and to this Supplemental Appendix as Supp. App. at ____.

TABLE OF CONTENTS

	PAGE
I JUDGMENT OF THE DISTRICT COURT...	2
II PORTION OF APPENDIX TO PETITION FOR HABEAS CORPUS AND RECORD OF DEFENDANT'S APPEAL TO THE CON- NECTICUT SUPREME COURT.....	3-25

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

JUN 19 10 10 AM '76

EDWARD MALLEY, JR.

vs.

STATE OF CONNECTICUT
and JOHN R. MANSON,
Commissioner of Corrections

US DISTRICT COURT
CIVIL ACTION NO. H-74-407

JUDGMENT

The above-identified action came on for consideration by the Court by the Honorable M. Joseph Blumenfeld, United States District Judge, of the Petitioner's Petition for a Writ of Habeas Corpus; and,

After consideration of the Petitioner's Petition the Court filed its Memorandum of Decision ordering that a Writ of Habeas Corpus would issue in the event that the State of Connecticut did not vacate the Petitioner's conviction and retry him within sixty (60) days from the date of said Memorandum of Decision, namely, June 15, 1976.

It is accordingly ORDERED and ADJUDGED that the Petitioner's request for a Writ of Habeas Corpus will be granted and a writ will issue in the event that the State of Connecticut fails to vacate the Petitioner's conviction and retry him within sixty (60) days from the date of said Memorandum of Decision.

Dated at Hartford, Connecticut, this 17th day of June,
1976.

APPROVED:

SYLVESTER A. MARKOWSKI, Clerk
United States District Court

M. Joseph Blumenfeld
M. JOSEPH BLUMENFELD
U. S. District Judge

By:

William D. Kaplan
Deputy-in-Charge

15

MAR 8 1972

SUPREME COURT
OF THE
STATE OF CONNECTICUT

NEW HAVEN COUNTY

JANUARY TERM, 1972

RECEIVED

MAR 9 1972

J. DANIEL SAGARIN

7130

STATE OF CONNECTICUT
vs.
EDWARD MALLEY, JR.

Superior Court
New Haven County
December 15, 1970

APPEARANCES

For the Plaintiff:

FRANCIS M. McDONALD, State's Attorney

For the Defendant:

J. DANIEL SAGARIN, Esq.

Defendant's Appeal from the Superior Court
for New Haven County at Waterbury

Hon. ARTHUR H. HEALEY, Judge and a Jury

Supp. App. 3

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TABLE OF CONTENTS

	PAGE
Information	2
Motion to set aside verdict	2
Order	3
Judgment	3
Defendant's appeal	4
Request for finding	5
Draft finding	7
Finding	7
I. State's offer of evidence and claims of proof	7
II. Defendant's offer of evidence and claims of proof	8
III. Charge to jury	11
IV. A. Rulings on evidence	33
B. Re: Arguments before the jury	37
V. Re: Motion to set aside the verdict	39
VI. Re: Exhibits	39
Motion to correct finding	39
Order	40
Assignment of errors	40
Correction to finding	41

SUPREME COURT
OF THE
STATE OF CONNECTICUT

NEW HAVEN COUNTY

JANUARY TERM, 1972

7130

STATE OF CONNECTICUT
vs.
EDWARD MALLEY, JR.

} Superior Court
New Haven County
December 15, 1970

APPEARANCES

For the Plaintiff:

FRANCIS M. McDONALD, State's Attorney

For the Defendant:

J. DANIEL SAGARIN, Esq.

Defendant's Appeal from the Superior Court
for New Haven County at Waterbury

Hon. ARTHUR H. HEALEY, Judge and a Jury

IN THE SUPERIOR COURT
FOR THE COUNTY OF NEW HAVEN AT WATERBURY

August 31, 1970

STATE VS. EDWARD MALLEY

Francis M. McDonald, State's Attorney for the County of New Haven at Waterbury, accuses Edward Malley of Waterbury, of the crime of Possession of a Controlled Drug, LSD at Waterbury, on or about 8/21/70 in violation of P.A. #753, Section 19, January Session, 1969, (19-481b of the G.S.)

COUNT TWO:

and the said State's Attorney further accuses the said Edward Malley of the crime of selling a controlled Drug, LSD, at Waterbury, on or about 8/21/70, in violation of P. A. 753, Section 18, January Session, 1969, (19-480b of the G.S.)

COUNT THREE:

and the said State's Attorney further accuses the said Edward Malley of the crime of selling a controlled drug, LSD, at Waterbury, on or about 8/21/70, in violation of P. A. 753, Section 18, January Session, 1969, (19-480b of the G.S.)

FRANCIS M. McDONALD
State's Attorney for the County of
New Haven at Waterbury

MOTION TO SET ASIDE VERDICT

The defendant hereby moves to set aside the verdict rendered in the above case because:

1. It is contrary to law.

2. It is against the evidence.

Defendant

ROBERT E. MELLON
His Attorney

(Filed: Nov. 25, 1970.)

Above motion denied.

HEALEY, J. 12/15/70.

#10,424

STATE OF CONNECTICUT

STATE OF CONNECTICUT
vs.
EDWARD MALLEY, JR.

} Superior Court
New Haven County
at Waterbury
December 15, 1970

Present, Hon. ARTHUR H. HEALEY, Judge

JUDGMENT

Upon the information of Francis M. McDonald, Esq. Attorney for the State of Connecticut, within and for the County of New Haven, at Waterbury, charging the said Edward Malley with the crime of possession of a controlled drug, LSD, in violation of Public Act 753, Section 19, January Session, 1969 (19-481b of the G.S.) on the First Count and with the crime of selling a controlled drug, LSD, in violation of Public Act 753, Section 18, January Session, 1969 (19-480b of the G.S.) on the second count, and with the crime of selling a controlled drug, LSD, in violation of Public Act 753, Section 18, January Session 1969 (19-480b of the G.S.) on the third count.

The prisoner appeared on September 17, 1970 and entered a plea of Not Guilty to each of the three counts of the information and elected a trial by a jury of twelve.

The prisoner appeared on November 18, 1970 and a trial to a jury began and on November 24, 1970 the jury returned a verdict of Guilty on the First and Second Counts of the information and Not Guilty on the third count.

Said action was referred to the Adult Probation Officer for a presentence investigation and report and continued to December 15, 1970 for sentence.

The prisoner again appeared on December 15, 1970. The Court asked the prisoner if he wished to say anything prior to sentencing and he responded.

IT IS ADJUDGED BY THE COURT that the prisoner is Guilty in manner and form as held in the verdict of the jury on Counts One and Two of the information.

The Court thereupon sentences the said Edward Malley, Jr. to the custody of the Commissioner of Corrections, at Somers, for a term of not less than one (1) year nor more than two (2) years on the second count of said information, and to the custody of said Commissioner of Corrections, at New Haven, for a term of one (1) year on the First Count of said information, the execution of said sentence on the First Count of said information suspended.

By the Court

FRANCIS J. BUTLER
Clerk

DEFENDANT'S APPEAL

In the above-entitled action, the defendant appeals to the Supreme Court from the Judgment rendered therein.

The Defendant,

By ROBERT E. MELLON

His Attorney

I hereby certify that the above Appeal has been filed with me this date, and that all fees relative thereto have been paid.

FRANCIS J. BUTLER
Clerk, Superior Court
New Haven County at Waterbury

REQUEST FOR FINDING ADDRESSED TO HON. ARTHUR H. HEALEY

The Appellant in the above entitled case respectfully requests a Finding of Facts with respect to the trial of the case to the jury, which trial commenced on November 19, 1970, for an Appeal to the Supreme Court and the Appellant submits the Draft Finding hereto annexed.

The questions of law which he desires to have reviewed are:

1. Was the State's conflicting evidence with respect to the time at which the alleged sale of LSD was to have taken place, as stated in Paragraphs 6, 24 through 39, 44 through 48 of the Draft Finding, sufficient to support a conviction in view of defendant's alibi testimony as stated in Paragraphs 12 through 23 of the Draft Finding?
2. Did the Court err in overruling objections to and allowing questioning by the prosecuting attorney designed to elicit testimony concerning the effects of LSD on users of LSD and on their families as stated in Paragraphs 163 through 166 of the Draft Finding.
3. Did any or all of the statements and/or actions of the prosecuting attorney during his summation and during the course of the trial as specified in Paragraphs 160 through 166 prejudice the defendant and thereby deprive him of his right to a fair and impartial trial.
4. Did the Court err in denying defendant's Motion to Set Aside the Verdict on the grounds that it was contrary

to law and it was against the weight of the evidence as stated in Paragraph 167 of the Draft Finding.

5. Did the Court err in denying defendant's motion to set aside the verdict in view of the testimony as stated in Paragraphs 12 through 41 and 44 through 48 of the Draft Finding in view of the lack of evidence offered by the State as stated in Paragraphs 42 and 43 of the Draft Finding.

6. In view of the lack of evidence of any close ties between defendant's alibi witnesses and defendant, did the court err in charging the jury as to the credibility of alibi witnesses as stated in Paragraph 137 and 138 of the Draft Finding.

7. Did the Court err in charging the jury that the State was not required to prove that the defendant was a person who was unauthorized to possess controlled drugs as stated in Paragraphs 42 and 43 of the Draft Finding.

8. Did the Court err in charging the jury the State was not required to prove that any possession of the controlled drugs by the defendant did not come within an exception to the statute as stated in Paragraphs 106-107 and 124-125 of the Draft Finding.

9. Did the Court err in charging the jury on the credibility of the accused as stated in Paragraph 80 of the Draft Finding.

10. Did the Court err in charging the jury on the State's intention in prosecuting as stated in Paragraph 67 of the Draft Finding.

Respectfully submitted,

The Defendant

Edward Malley, Jr.

By DAVID SAGARIN

His Attorney

(Filed: Oct. 19, 1971.)

DRAFT FINDING

SECOND:

The defendant offered to prove and claimed to have proved the following facts:

42. The State offered no evidence to show that defendant was not authorized to possess controlled drugs.

43. The State offered no evidence to show that the defendant was not authorized to sell controlled drugs.

45. Defendant's Exhibit 2 was the hand written note paper of the undercover agent.

The Defendant

By J. DANIEL SAGARIN

His Attorney

(Filed: Oct. 19, 1971.)

FINDING

I

Upon the trial of this case to the jury the State offered evidence to prove and claimed that it proved the following facts:

1. On August 21, 1970 Robert Laviana and Richard Staebler were members of the Central Naugatuck Valley Regional Narcotics Squad, engaged as undercover agents purchasing illegal drugs.

2. On that date both Laviana and Staebler met the defendant on Thomaston Avenue and Chase Avenue in Waterbury.

3. At that meeting the defendant asked the officers if these officers wanted some L.S.D., and the officers replied that they did.

4. The first conversation occurred while the officers were in one car and the defendant was in another car and both had stopped at a traffic light.

5. Following that conversation the officers drove to South Main and McMahon Streets in Waterbury, near Butch's Restaurant, and met the defendant by prearrangement.

6. The officers paid \$25.00 to the defendant in exchange for seven tablets containing L.S.D.

7. The transaction occurred at about 3:40 to 3:50 p.m.

8. At this time, the officers noted that the defendant was operating a late model blue Chevrolet, bearing Connecticut registration G.H. 158.

9. Connecticut registration G. H. 158 was issued to the defendant for a period covering August 21, 1970.

10. L.S.D. is a controlled drug having hallucinogenic qualities.

11. The defendant was at the Webster Insurance Agency in Waterbury on August 21, 1970, some time after 4:15 p.m.

II

Upon the trial of this case to the jury the defendant offered evidence to prove and claimed he had proved the following facts:

12. Defendant is married and lives with his wife and children at 96 Fairmont Street in Waterbury.

13. On the evening before August 21, 1970 a tape player was stolen out of defendant's car.

14. The theft was reported to the Waterbury Police.

15. On the afternoon of the 21st of August, 1970, defendant left his house at approximately 2:30 p.m. to go to J & L Stereo on Railroad Hill Street.

16. Defendant went to J & L Stereo to get price estimates on the tapes and on the tape player which were stolen from him.

17. Defendant left J & L Stereo and went to Webster's Insurance Office in order to make a claim on a stolen tape player.

18. He stayed at Webster's Insurance Agency for a good hour, staying until at least 25 minutes to five in the afternoon.

19. Mr. Louis Esposito, owner of J & L Stereo, testified that Edward Malley was in his place of business on August 21, 1970 in the middle of the afternoon.

20. The purpose of the visit was to come in for an estimate on a tape player that was stolen the day before and Mr. Esposito wrote out an estimate for the tape player.

21. Mr. David R. Young of Webster's Insurance Service, Inc. testified that Mr. Malley was in his office on August 21, 1970.

22. The purpose of Mr. Malley's visit to Webster's Insurance Service was to discuss the stolen tape player and to discuss the fact that the car which he had previously bought thinking it was new and had turned out to be a used car.

23. Mr. Malley was in Mr. Young's office for a longer period of time than the time in which he spoke with Mr. Young.

24. Officer Laviana testified that he met a man who allegedly made the sale at approximately 3:00 in the afternoon on August 21, 1970.

25. Officer Laviana testified that the purchase took place at approximately 3:40 in the afternoon of the same day.

26. Richard Staebler testified the first time he saw the man he identified as the defendant on that day was at 3:40 p.m.

27. Richard Staebler stated that the purchase took place at approximately seven or eight minutes later and therefore at approximately 3:50 p.m.

28. Staebler and Laviana worked for Lt. John Griffin.

29. Lt. Griffin, a few days after the alleged purchase in order to secure defendant's arrest, made out an affidavit.

30. Lt. Griffin's affidavit was allegedly based on a signed affidavit of the undercover agents.

31. No affidavit of the undercover agents was ever produced. All that was produced was a statement of Officer Laviana.

32. Officer Laviana's written statement (Defendant's Exhibit 1) refers to a meeting on Manhan Street.

33. There is a Manhan Street in the town of Waterbury as well as a McMahon Street in the town of Waterbury.

34. According to the affidavit of Lt. Griffin, the undercover agents had contact with the man from whom narcotics were subsequently purchased at approximately 3:50 p.m. at the intersection of Thomaston and Homer Streets.

35. The purchase was thereafter made at approximately 4:00 p.m., according to Lt. Griffin's affidavit.

36. State's Exhibit D and E indicate the time of the alleged purchase as being 4:00 p.m. on August 21, 1970.

37. Defendant's Exhibit 2, the handwritten note paper of the undercover agents indicates that at 3:30 p.m. the undercover agents were making contact with an individual known as Kenneth Antonacci to buy L.S.D.

38. Mr. Malley was not at Butch's Restaurant on South Main Street on the day in question.

39. Mr. Malley did not sell L.S.D. to Messrs. Laviana and/or Staebler.

40. Defendant's Exhibit 3 was an affidavit of Lt. Griffin of the Naugatuck Valley Regional Narcotics Squad.

41. State's Exhibit D is a receipt for specimen submitted to Connecticut State Department of Health for L.S.D. tablets alleged to have been sold.

42. State's Exhibit E is a form of the return of the specimen submitted for examination to the State Department of Health and is a copy of State's Exhibit D.

III

The Court charged the jury as follows and no exceptions to the charge were taken by the defendant.

43. The Court. All right, ladies and gentlemen of the jury, it is now my duty to charge you as to the law.

44. All the evidence has been presented and counsel have given you their arguments. As this is a criminal case there is a certain duty which evolves upon me as the Court and upon you as jurors.

45. It is the duty of the Court to say to you what the law of the case is, that is, to explain it and define it in such a manner as may be necessary to enable you to apply the law to the facts which have been brought out in the evidence.

46. It is also your duty and your sole duty to decide the facts of the case as you find the evidence may have disclosed them. By evidence I mean not only the testimony of the witnesses and the exhibits which have been admitted into evidence, but also any reasonable inferences you may draw therefrom.

47. The duty of the Court and the jury is sharply separated.

48. It is not the province of the jury to say what in its opinion the law ought to be. If, as I state to you during

REMAINDER OF JURY CHARGE OMITTED

count you folks are to decide whether or not the state has proved this accused guilty beyond a reasonable doubt and your verdict there will be either guilty or not guilty.

152. As to the third count, by virtue of my direction, you must return a verdict of not guilty on that count.

IV

A.

During the presentation of evidence at the trial the following occurred:

153. During the course of the trial the prosecutor made reference and attempted to introduce into evidence facts concerning the effects of L.S.D. on users and on users' families. On re-cross examination of Officer Laviana he was asked if he was experienced or experimented with the use of narcotics and he said that he had not. Thereafter, on re-direct the prosecutor asked Laviana if in answer to defense counsel asking him if he had ever used narcotics he had said he never used them and Laviana then said to the prosecutor "That's right." Immediately thereafter the following occurred:

"Q. How about L.S.D., have you ever used that?

A. No, sir.

Q. You've seen people using these drugs, have you not?

A. I have seen people under the influence of it, yes, sir.

Q. You've seen what effects it has on them in their lives?

A. Yes, sir.

Mr. McDONALD. Nothing further.

Mr. MELLON. Your Honor, I think I'll object to the effect on their lives.

The COURT. I'm going to let it stand. I think the objection should be timely made. Is there anything more of this witness?"

154. During the re-direct of the examination of Officer Staebler the following occurred:

"Q. Mr. Mellon asked you, if you ever experienced or experimented with the use of narcotic drugs. Are you familiar with those people that have; have you seen people after using narcotic drugs?

A. Can I back up here a little bit on his question?

Q. Yes,

A. You're talking about —

Mr. MELLON. Your Honor, I'll object to it. He's answered my question.

The COURT. All right. At this point the objection is sustained.

Q. Have you ever used L.S.D.?

A. No, sir.

Q. Heroin?

A. No, sir.

Q. Any of the narcotic drugs prohibited by the law?

A. No, sir.

Q. And you're familiar with some people that have?

A. Yes, sir.

Q. You've dealt in this area for some time as an undercover man?

A. Yes, sir.

Q. Seen the effects on their families?

Mr. MELLON. I'll object to this, your Honor.

The COURT. I'll allow him to answer this question yes or no.

Q. You're familiar with the effect of these drugs on the people that use them, their families?

A. Yes.

Mr. MELLON. Objection.

The COURT. Sustained."

155. During the direct examination of Dr. Abraham Stelman the following occurred:

"Q. What is a hallucinogenic drug?

A. It produces hallucinations; it's a mind-expanding drug.

Q. And does this have any reference to — L.S.D., to the term 'good trip' or 'bad trip' in your experience? . . .

A. Now, that hallucinogenic drug, what effect does it have on the mind? . . .

Q. Now doctor, what is a drug?

A. A drug is a substance which produces a pharmacological response on the human body . . .

Q. And included are these hallucinogenic effects?

A. Yes, sir."

156. On direct examination the defendant said that he had never used narcotics and that all he knew about L.S.D. was what he had read about it or had seen on television. On cross-examination of the defendant the following occurred:

"Q. All right. Now, I think you told Mr. Mellon that you don't sell L.S.D.

A. That is right.

Q. Is that right?

A. Yes.

Q. Do you know what the price of L.S.D. is in Waterbury on the street?

A. No, I don't. I have no idea.

Q. You have no idea what the price is?

A. No.

Q. And you told Mr. Mellon and told this jury that all you know about L.S.D. is what you heard about it and seen on television?

A. Right.

Q. What you have read about it and seen on television?

A. Yes.

Q. You know it is a dangerous drug?

A. That is for sure.

Q. You know that it can cause permanent damage to people that use it, don't you?

A. I suppose it can. I wouldn't know. I never sampled it.

Q. You have read or seen about it on television, haven't you?

A. Yes, I have.

Q. It is a so-called psychedelic drug?

A. Yes, it is, I imagine.

Q. People have good or bad trips on it?

Mr. MELLON. I will object to this.

Mr. McDONALD. Mr. Mellon went into it.

The COURT. I will allow it.

Mr. MELLON. May an exception be noted?

The COURT. Yes.

Mr. MELLON. For this reason: I don't think he is an expert to testify.

The COURT. If he doesn't know, he can say he doesn't know. He realizes that.

By Mr. McDonald:

Q. You know that people can have bad trips on L.S.D. You have heard that.

A. I have seen it on television.

Q. And they can go off?

A. I have read different articles about it, where something like that happened.

Q. You wouldn't have anything to do with selling that to young people, would you?

A. I wouldn't sell it to anybody.

Q. You know it is deadly stuff, don't you?

A. It sure is."

B.

During the arguments before the jury the following occurred:

157. During the summation of the defense counsel, the prosecutor objected, in the presence of the jury, on the issue of the undercover agent's prior knowledge of the defendant as follows:

"Mr. McDONALD. Now, your Honor, I have to object again on the issue of prior knowledge. When that issue came up I think one of the officers testified that he had prior knowledge as to any other involvement or not, and Mr. Mellon objected, and your Honor sustained the objection."

158. During his summation the prosecutor advised the jury as to the effect of having called the undercover agents to the stand as follows:

"The police officers have testified here before you. They have blown their cover. They come in here and identify before you, two excellent trained investigators, undercover men who, you heard their testimony, purchased over a hundred various items of heroin, L.S.D. and other controlled drugs. They have come in and we have lost them as undercover men due to this case, but we put them on here as witnesses before you, because this L.S.D. problem and the sale of it is such a serious offense." ...

"They go around with a beard and attempt to buy these drugs, and they succeeded. But something went wrong with Mr. Malley this time because these men came into Court and testified before you, ladies and gentlemen of the jury." ...

"Now with respect to this drug scene, there are few people fighting it and a few of them are the two that testified here. There aren't many others, and we have lost them due to this trial."

159. During his summation the prosecutor advised the jury about the drug scene and the use of psychedelic or hallucinogenic drugs, as follows:

"This question of the use of these psychedlic or hallucinogenic drugs has inflamed our country and has put many of us to asking questions about the use of this drug by our young people."

"We often hear the expression the drug Scene. And when we think of the drug scene, we think of what we see on television, what we hear about, the group in Greenwich Village, young people dressed in hippie style using marijuana, L.S.D., speed, some one of these other drugs who turn on, but that is not the drug scene as we see it."

V

160. Defendant filed a motion to set aside the verdict on the grounds that it was contrary to law and it was against the weight of the evidence, which the court denied.

VI

All the exhibits admitted into evidence at the trial are made a part of the finding and may be used in argument before the Supreme Court without being printed.

HEALEY, J.

(Filed: Dec. 7, 1971.)

MOTION TO CORRECT FINDING

Defendant believes the court erred in its finding and moves to correct the same as follows:

1. In refusing to find the material facts set forth in paragraphs 33 and 44 of the draft finding in accordance with the testimony of Officer Laviana (T-26).
2. In refusing to find the material facts set forth in paragraphs 42 and 43 of the draft finding which facts are undisputed.

3. In refusing to find the material facts set forth in paragraph 45 of the draft finding which fact is undisputed.

Respectfully Submitted,
The Defendant
Edward Malley, Jr.
By J. DANIEL SAGARIN
His Attorney

(Filed: Dec. 16, 1971.)

Motion to Correct Finding Granted as to ¶ 1 therein and
Denied as to ¶2 and ¶3.

HEALEY, J, 1/10/72

ASSIGNMENT OF ERRORS

The court erred:

1. In denying defendant's motion to set aside the verdict on the grounds that it was contrary to law and was against the weight of the evidence because the conflicting evidence offered by the state was not sufficient to support a verdict and because testimony as a whole was not sufficient to support a verdict.
2. In allowing, refusing to strike and/or failing to give cautionary instructions as to the testimony elicited by the prosecutor and the arguments of the prosecutor as stated in paragraphs 153, 154, 155, 156, 158 and 159 of the finding.
3. In denying defendant's motion to set aside the verdict because defendant was prejudiced by the actions of the prosecutor as stated in paragraphs 153, 154, 155, 156, 157, 158 and 159 of the finding.
4. In charging the jury as appears in paragraph 131 of the finding; said charge being erroneous and inapplicable because of the lack of any evidence of any close ties between defendant's alibi witnesses and the defendant.

5. In charging the jury as appears in paragraphs 100 and 101, 118 to 119 of the finding. Said charge was erroneous and unconstitutional because it had the effect of shifting the burden of proof from the state to the defendant on an essential element of the crime charged.

6. In charging the jury as stated in paragraphs 74 and 75 of the finding.

7. In charging the jury as stated in paragraph 61 of the finding.

The Defendant

Edward Malley, Jr.

By J. DANIEL SAGARIN

His Attorney

(Filed: Dec. 16, 1971.)

Examined, HEALEY, J. 1/10/72.

CORRECTION TO FINDING

Section II of the finding, i.e. upon the trial of this case to the jury, the defendant offered evidence to prove and claimed he had proved the following facts, is corrected by adding to said Section II the following paragraphs:

42A. Officer Laviana could not state that the statement which is defendant's exhibit 1 was written on August 21, 1970.

42B. Defendant's exhibit one was a handwritten statement of Officer Laviana.

HEALEY, J.

(Filed: Jan 14, 1972.)

SUPREME COURT
NEW HAVEN COUNTY }

Clerk's Office
March 2, 1972

The above and foregoing is a true copy of the record in
said case to be used in the trial in the Supreme Court.

EDWARD HORWITZ, Clerk.